

Federal Communications Commission RECEIVED Before the

CC Docket No. 94-46

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY In the Matter of Revision of Part 22 and Part 90 of the WT Docket No. 96-18 Commission's Rules to Facilitate Future Development of Paging Systems Implementation of Section 309(j) PP Docket No. 93-253 of the Communications Act--DOCKET FILE COPY CHICAGO Competitive Bidding

To: The Commission

COMMENTS

Paging Partners Corporation, a Delaware corporation, submits these its Comments in connection with the Interim Licensing Proposal in the abovereferenced Notice of Proposed Rulemaking ("NPRM" or "Notice"), FCC 96-52, released February 9, 1996.

Background

On February 9, 1996, the Commission released the NPRM, proposing interim rules for paging licensing. Initially, the Commission suspended acceptance of new applications for paging channels. The Commission also stated that it would allow incumbent licenses to add or modify sites within the interference contour of existing systems. The Commission proposed interference protection for 929 MHz licenses on the same basis as Part 22 licensee.

The Commission also proposed that incumbents be allowed to file new applications to expand or modify their systems beyond their existing interference contours, but would receive only secondary use authorization. The Commission requested comments on limitations on secondary licensing.

The Commission stated that it would process applications that were not mutually exclusive with other applications as of the <u>Notice</u> adoption date and the period for filing competing applications had expired as of the Adoption date of the Notice.

The Commission further proposed the continuation of the stay on 931 MHz frequencies, processing the 931 MHz applications pending prior to the Adoption date of the Notice and for which the 60-day window for filing competing applications had expired, retaining those mutually exclusive applications for competitive bidding. Likewise it would process non-mutually exclusive VHF and CCP applications provided that the window for filing competing applications had closed.

The Commission proposed the processing of non-mutually exclusive PCP applications that were filed before the adoption date of the Notice. In connection with requests for conditional and permanent exclusivity that are pending under current PCP exclusivity rules, the Commission stated that consideration of such requests would be postponed during this proceeding.

Finally, the Commission stated that it would continue to process pending applications for non-exclusive PCP channels, pending the outcome of this proceeding.

Introduction

Paging Partners operates common carrier and private carrier services in the northeast corridor of the United States. It presently operates one-way wireless messaging service on 931.7875 MHz in New York, New Jersey, Connecticut,

Delaware, Pennsylvania, and Maryland, the District of Columbia and Virginia, with locations as well in Tennessee, Georgia, Alabama, and Mississippi. Since Paging Partners' common carrier frequency was not available over the entire region from Boston to Washington, D.C., Paging Partners applied for and received Part 90 private carrier paging authorizations. It has received exclusivity on the frequency 929.6375 MHz in Philadelphia and Washington, D.C. and has requests pending for exclusivity in Boston and New York.

Discussion

Paging Partners is categorically opposed to the freeze on applications for paging channels for existing licensees for several reasons: First, the frequencies frozen are mature frequencies. The Commission itself stated in the NPRM at page 5 that some of these frequencies were allocated as long ago as 1949, with the most recent allocations made in 1982! Freezing these frequencies to assess their value as auction opportunities is equivalent to locking the barn several years after the horses have ridden off with their second or third owner. The only opportunity left, in most cases, is green mail by speculators or others to extract money from legitimate operators, which the Commission has professed that it abhors.

The Commission should admit that the auction opportunities are gone and lift the freeze insofar as existing licensees go. If, however, the Commission insists on a limited freeze, Paging Partners proposes that existing licensees be allowed to add locations or modify facilities on a primary basis as long as their existing service area contours overlap. This would serve the public interest in providing more efficient and effective coverage to existing subscribers, while granting incumbent licensees the flexibility that the Commission has stated the licensees

Paging Partners Corporation also proposes, and will address more fully in its Comments to the NPRM as a whole, that an existing licensee on a frequency which has 70% coverage of a geographic market be exempt from any auction.

should have. As another alternative, Paging Partners proposes that the Commission give incumbent paging licensees a window of opportunity, as it did for existing MDS licensees during its freeze, expanding the protected service area and give a 90-day window to make necessary system changes, prior to the effective date of the new Rules.

Paging Partners agrees with the Commission that interference protection should be given to 929 MHz licensees in the same manner as Part 22. However, Paging Partners objects to the application of the proposed standard to previously licensed facilities. Since these charts are based on an average of height and power (1,000 watts, 1000 feet), as the height is lowered, the service and interference contour contract. This in essence reduces previously authorized areas. alleviate this inequity, Paging Partners proposes that existing facilities be grandfathered with a 20 mile service area contour and a 50 mile interference contour. Further, Paging Partners submits that existing interference contours must be protected since fill-in transmitter sites built during this interim period in this contour will be caused interference, if and when an auction winner begins operation. To do otherwise would be a de facto modification of an licensee's authorization, a taking, which raises serious equitable considerations. Business decisions have been made and money invested in reliance on the existing standards. Compare 47 U.S.C. 316. Auctions were never meant to be substitutes for well thought out policy decisions. These existing paging operators have proven that the spectrum is being used to promote competition and add to the economy by providing jobs for their industry and related industries, i.e. equipment manufacturers.

Finally, Paging Partners requests that the Commission process the pending exclusivity requests in the 929 MHz frequency band. In many cases, these requests have been pending for over two years, long before the Commission

proposed to assess its auction opportunities for these frequencies. The 929 MHz applicant have been whipsawed by changing Commission policies, first by the possibility of exclusivity of the frequencies and now, by the freeze on any activity in the 929 MHz area. The Commission should give its imprimatur on these legitimate requests instead of eclipsing them by a retroactive rulemaking.

Conclusion

Paging Partners respectfully requests that the Commission take these Comments into consideration in connection with the proposed rulemaking.

Respectfully submitted,

PAGING PARTNERS CORPORATION

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